



## State of New Hampshire

### PUBLIC EMPLOYEE LABOR RELATIONS BOARD

WINDHAM FIREFIGHTERS, I.A.F.F.,  
LOCAL 2915

Complainant

v.

TOWN OF WINDHAM, NEW HAMPSHIRE

Respondent

CASE NO. F-0134:5

DECISION NO. 91-26

#### APPEARANCES

##### Representing Windham Firefighters, IAFF, Local 2915:

Glenn Milner, Esq., Counsel

##### Representing Town of Windham, New Hampshire:

Gary W. Wulf, Consultant

##### Also appearing:

David Sullivan, Town of Windham  
James Weed, Town of Windham  
Bill Wallace, Town of Windham  
Don Worthington, Local 2915  
Ronald L. Hoegen, Local 2915

#### BACKGROUND

On October 31, 1990 the Windham Firefighters I.A.F.F., Local 2915 filed an unfair labor practice charge against the Town of Windham in which the union alleges that the Town had refused to abide by the terms and conditions of the personnel policy in effect, with respect to the employees of the Town of Windham, more specifically with respect to the disposition of one Donald Worthington case and refusal to consider negotiations with respect there to.

History of the case summarized as follows. Firefighter Donald Worthington was hired as a probationary employee as a firefighter in May of 1989. Local 2915 of I.A.F.F. was certified as the exclusive bargaining agent for the Windham Firefighters by PELRB on June 19, 1989.

The voters at the town meeting of March 1990 voted a 5% cost of living increase to town employees not subject to union negotiations retroactive to January 1, 1990. Firefighter Worthington was granted the 5% increase in accordance

with the action of the Town meeting and given a 5% raise, cost of living raise retroactive to January 1, 1990. Firefighter Worthington was due to complete his probationary period and become a permanent employee. May 4, 1990 firefighter Worthington received a favorable personnel review and was granted permanent status as a full time firefighter.

Town personnel policy calls for a probationary firefighter upon being appointed as permanent firefighter shall be placed at step 2 of the classification plan which being granted a specific salary which calls for a 10% increase from the firefighters base salary.

A timely grievance was filed on behalf of firefighter Worthington alleging that the Town had improperly disposed of his grievance, the bases for the denial of the grievance was because Worthington was a member of the collective bargaining unit on the date of his anniversary. The union alleges that this failure to grant this grievance was an improper act under 273-A:5 to restrain, coerce or otherwise interfere with its employees exercising the rights conferred by RSA 273-A. Further that denial of certain increases were discrimination on the part of the town.

The Town in its response to the improper charge summarized as follows. Employment record of firefighter Worthington was not in dispute and further states that Worthington while still a probationary firefighter was granted a 5% cost of living raise retroactive in January 1, 1990. The probationary period and favorable personnel review are not in dispute and Worthington was graduated from probationary to permanent full time firefighter on or around May 4, 1990. The Town alleges that the grievance was properly denied by the Selectmen and that their actions were deemed appropriate and that firefighter Worthington was not in fact entitled to the 5% cost of living increase plus a 10% step increase which applied to any firefighter gaining permanent status upon completion of the probationary period. The Town alleges there was no policy which stated a probationary employee was to receive a 10% step increase at the completion of the probationary period indicating there was no such personnel policy. The personnel policy in the Town of Windham as follows: "Probationary - Upon appointment permanent and part time employees shall be assigned to a predetermined probation period as established in this policy. Upon satisfactorily completing the prescribed probationary period, the employee will be elevated to permanent full time status by vote of the Board of Selectmen." The Town alleges that firefighter Worthington upon gaining permanent full time status on his anniversary date, was placed in step 2 of the salary schedule that is the same step that is granted all other employees who have one year of satisfactory service for the fire department and who started out as step one. The Town further allege that the parties had been in negotiations for many months and that the matter of Worthingtons grieved situation concerning step increases and was mentioned at the negotiating table and further answers that the town's position is that the treatment of Worthington being a member of the newly certified bargaining unit should be the subject of negotiation between the parties.

The issue presented in this case is whether or not the 5% cost of living raise granted at the Town meeting of 1990 which Worthington received should be supplemented by an additional 10% step increase upon completion of the probationary period and gain permanent firefighter status, making a total of 15% increase upon attaining permanent status.

Hearing on this matter was held on February 5, 1991 at the PELRB office in Concord, N.H. Testimony was offered by Don Worthington as to his employment and agreed that the facts stated were not in dispute. Testimony was taken from other members of the fire department with respect to the Towns practice in placing probationary firefighters in step 2 of the appropriate classification upon completion of the probationary period. The personnel policy of the Town of Windham was presented and discussed by the Town Administrator and testimony indicated the historical procedures followed with respect to other probationary employees upon obtaining

permanent status.

The unions position in this case being that firefighter Worthington was entitled to the 5% cost of living raise plus the 10% second step increase granted permanent firefighters upon completion of probationary period.

The Towns position is that Worthington was entitled only to the salary scale at step 2 upon reaching permanent status which includes the 5% general increase plus another 5% equaling the 10% step 2 increase over and above firefighter base pay. The Town also alleges that testimony that a newly certified bargaining unit was totally aware of the facts in Worthington case and it had not been made a subject of discussion in negotiations which at this point had not been completed.

After reviewing all the exhibits and testimony offered in the case the following findings of fact are made and substituted for the request of the parties.

#### FINDINGS OF FACT

1. The facts in this case are undisputed concerning the dates of Worthingtons employment with the Town of Windham.

2. Firefighter Worthington received 5% non union increase authorized at the 1990 Town meeting which was given to all Town employees even though he was still in a probationary status.

3. Firefighter Worthington completed his probationary period and according to Town policy he should go to step 2 in the classification and salary schedule and was paid in accordance with the plan requirement at step 2.

4. The union claims that he was entitled to the 5% cost of living increase plus the 10% over and above the base firefighter step 1 in the salary scale which would in effect make this single firefighter receiving 5% more then firefighters in the same classification at step 2.

5. The unions claim that this individual should be an exception to the rule fails, on the face of the facts and testimony before us.

6. This Board has consistently refused to become a party to wage determination, which must be left to the parties at the table for negotiations as prescribed by RSA 273-A:1 (XI).

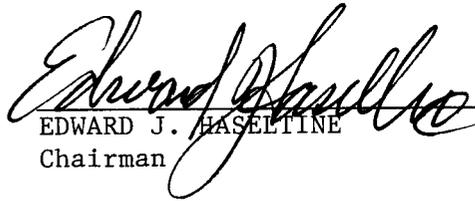
7. This Board finds that firefighter Worthington was properly placed on step 2 upon completion of his probationary period and was paid properly according to the testimony, Town policy and facts before us.

8. The disposition of firefighter Worthingtons case by the Town does not constitute an improper practice under 273-A:5.

#### ORDER OF THE BOARD

The Board finds that the Town of Windham properly placed firefighter Worthington in step 2 of the existing personnel policy upon completion of his probationary period and he was paid accordingly and finds no unfair labor practice committed by the Town of Windham

Signed this 16th day of May, 1991.

  
EDWARD J. HASELTINE  
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Also present and voting Board members E. Vincent Hall and Seymour Osman.